Supreme Court, U. S.
FILED
MAR 12 1980
JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-1410

JOHN A. DUPART &
REGINALD ADAMS,

Petitioners

vs

STATE OF LOUISIANA,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO SUPREME COURT OF THE STATE OF LOUISIANA

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TABLE OF CONTENTS

PAGE

OPINIONS OF THE COURTS BELOW. 2

JURISDICTION OF THE SUPREME COURT 2

QUESTIONS PRESENTED FOR REVIEW. 2

CONSTITUTIONAL PROVISIONS INVOLVED 2

STATEMENT OF THE CASE. 3

INTRODUCTION 3

STATEMENT OF FACTS 6

REASONS FOR GRANTING THE WRIT. 7

INTRODUCTION 7

I. WHETHER THE PLAIN VIEW DOCTRINE WAS APPLICABLE IN THE INSTANT CASE 8

II. WHETHER THE INITIAL STOP OF DEFENDANTS WAS A LAWFUL INVESTIGATORY STOP 11

CONCLUSION 13

CERTIFICATE OF SERVICE. 14

APPENDIX A-1

TABLE OF AUTHORITIES CITED

PAGE

Adams v. Williams, 407 U.S. 143 (1972). 5

Carroll v. United States, 267 U.S. 132 (1925). 5

Chambers v. Maroney, 399 U.S. 42 (1970) 5

Collidge v. New Hampshire, 403 U.S. 443,
91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). 8,11

Harris v. United States, 390 U.S. 234 (1968) 5

Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684,
6 L.Ed.2d 1081 (1961) 13

Peters v. New York, 392 U.S. 40, 88 S.Ct. 1889,
20 L.Ed.2d 917 (1968) 12

Siberon v. New York, 392 U.S. 40, 88 S.Ct. 1889,
20 L.Ed.2d 917 (1968) 11

State v. Crosby, 338 So.2d 584 (La. 1976). 4

Terry v. Ohio, 392 U.S. 1 (1968) 5,12

CONSTITUTIONAL AND STATUTORY PROVISIONS

PAGE

UNITED STATES CONSTITUTION

FOURTH AMENDMENT. 3

FOURTEENTH AMENDMENT. 3

28 U.S.C. Section 1257(3) 2

La. R.S. 14:62. 3

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STATE OF LOUISIANA,

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PETITION FOR A WRIT OF CERTIORARI TO
SUPREME COURT OF THE STATE OF LOUISIANA

JOHN A. DUPART and REGINALD ADAMS, petitioners herein pray that a writ of certiorari issue to review the judgment entered in this criminal case on November 12, 1978 and made final on December 13, 1979 by the Supreme Court of the State of Louisiana.

OPINIONS OF THE COURTS BELOW

The opinion of the Supreme Court of the State of Louisiana, not yet reported, appears in the Appendix hereto.

JURISDICTION OF THE SUPREME COURT

The judgment of the Supreme Court of the State of Louisiana was entered on November 12, 1979. Petitioners' timely application for a rehearing was denied on December 13, 1979. Title 28, United States Code, Section 1257(3) confers jurisdiction on this Court to review the judgment in question by a writ of certiorari.

QUESTIONS PRESENTED FOR REVIEW

Whether the Supreme Court of the State of Louisiana used the correct federal constitutional standards in holding that the trial court had properly denied a motion to supress physical evidence seized from an automobile stopped without being able to articulate a reason and searched after the occupants had exited and were several yards behind the vehicle with the stopping officer.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the priviliges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

INTRODUCTION

Two, defendants, petitioners, JOHN A. DUPART and REGINALD ADAMS were charged by the State of Louisiana by bill of information with the crime of simple burglary (R.S. 14:62). On November 29, 1978 a motion to suppress evidence was held relative to petitioner JOHN A. DUPART. At the end of that hearing, the motion to suppress was denied. On December 11, 1978 a second hearing was had on a motion to suppress relative to petitioner, REGINALD ADAMS. The testimony

taken in the November 29, 1978 motion to suppress was incorporated into the December 11, 1978 motion to suppress by stipulation of all parties. Said motion was denied and proper objection was noted.

Subsequent to the ruling of the Court on December 11, 1979, both defendants entered a plea of guilty to receiving stolen things valued at $200.00 with reservation of their right to take an appeal from the ruling of the Court on the motions to suppress evidence of November 29, 1978 and December 11, 1978, pursuant to the provisions of *State v. Crosby,* 338 So.2d 584 (La. 1976). They were subsequently sentenced.

On appeal the Supreme Court of the State of Louisiana affirmed the defendants' convictions and sentences on November 12, 1979. An application for rehearing was filed with that Court on November 26, 1979 and was denied on December 13, 1979.

The only issue on appeal was whether the search and seizure of the items sought suppressed was violative of the Fourth and Fourteenth Amendments.

The Supreme Court of the State of Louisiana, in determining the validity of the warrantless search of the vehicle, examined three points in time: the initial stop of the vehicle, the police officer's observation of the jewelry on the front seat, and the subsequent search of the vehicle.

In analyzing the initial stop of the vehicle, the Court, after reviewing the standards set forth in *Terry v. Ohio,* 392 U.S. 1 (1968) and *Adams v. Williams,* 407 U.S. 143 (1972) as applied to the stopping of automobiles based upon reasonable suspicion, found that in the instant case the police officer was justified in stopping the defendants' vehicle for investigatory purposes. From this point in its analysis, the Court then concluded that, pursuant to *Harris v. United States,* 390 U.S. 234 (1968), the objects seized were in the plain view of an officer who had a right to be in the position to have that view and those items were therefore subject to seizure.

The Supreme Court of the State of Louisiana concluded its analysis by relying upon *Chambers v. Maroney,* 399 U.S. 42(1970) and *Carroll v. United States,* 267 U.S.132(1925), and held:

> "We believe that the officer's observation of the jewelry on the front seat of the car together with the previous suspicious circumstances gave Deputy Schomaker probable cause to believe that evidence of the burglary was inside the vehicle. When probable cause exists for the searching of a vehicle and circumstances render securing a warrant impractical, a warrantless search of the automobile does not violate the fourth amendment. *** In the instant case, the suspects' vehicle was stopped on a public street at night in the immediate area where the crime had just previously been committed. Clearly, the circumstances rendered securing a warrant impractical. Since there were probable cause and exigent circumstances, the warrantless search of the suspects' vehicle was not unconstitutional. ***"

STATEMENT OF FACTS

On September 26, 1978 at 10:29 P.M., Officer Richard Schomaker received a call of a robbery in process at 3730 Jean Street in the Parish of Jefferson, off Division Street. Officer Schomaker proceeded to the area of Jean Street where he was advised by officers there that one person had left that location on foot headed south from Jean Street and was being chased by several other officers. No other description or information was given to Officer Schomaker.

Officer Schomaker then proceeded back south on Division Street. When he was one block south of Jean Street at Stefano Street, he saw a dark Oldsmobile pull out slowly from Jean Street into his view. The vehicle had stopped for a stop sign at the intersection of Stefano Street and Division. The vehicle slowly pulled off from the stop sign, reaching a speed slower than the stated speed limit there of twenty miles per hour. Officer Schomaker admitted that at this instant in time he had no information whatsoever linking this vehicle to the burglary or robbery at 3730 Jean Street. Despite the lack of information linking the vehicle to any crime or traffic violation, Officer Schomaker at this instant in time decided to make an investigatory stop of the vehicle.

Officer Schomaker proceeded to effect the stop of the vehicle and pulled it over in the 3500 block of Division Street. Just prior to the actual stop he observed

a great deal of activity inside the car. Officer Schomaker ordered the defendants to get out of their vehicle, to come over to the police vehicle and place their hands on the police vehicle. He then made a quick search of the defendants for weapons, finding nothing. He then walked away from the defendants and went over to their vehicle and saw pieces of jewelry laying on the front seat of the car on the right hand side. At this instant in time he had no information relative to whether anything had been taken from 3730 Jean Street, including jewelry. Officer Schomaker, without any further information, later went back to the vehicle a second time, entered it and made a thorough check of the front, finding additional jewelry, a sledge hammer, screwdrivers, a flashlight and brown gloves. Said objects were the subject of the motions to suppress evidence.

REASONS FOR GRANTING THE WRIT

INTRODUCTION

The petitioner argues that the only issue involved in this matter is whether or not the seizure of jewelry, a sledge hammer, screwdrivers, a flashlight and brown gloves was constitutionally correct. This issue in turn reduces to the problem of answering two questions:

(1) Whether the plain view doctrine was applicable in the instant case?

(2) Whether the initial stop of defendants herein was a lawful investigatory stop?

I. WHETHER THE PLAIN VIEW DOCTRINE WAS APPLICABLE IN THE INSTANT CASE?

In *Coolidge v. New Hampshire,* 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564(1971) the United States Supreme Court explained the circumstances under which the plain view doctrine is of significance:

> "It is well established that under certain circumstances the police may seize evidence in plain view without a warrant. But it is important to keep in mind that, in the vast majority of cases, any evidence seized by the police will be in plain view, at least at the moment of seizure. The problem with the 'plain view' doctrine has been to identify the circumstances in which plain view has legal significance rather than being simply the normal concomitant of any search, legal or illegal.
>
> " * * *
>
> "What the 'plain view' cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which he came inadvertently across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification-whether it be a warrant for another object, hot pursuit, search incident or lawful arrent, or some other legitimate reason for being present unconnected with a search directed against the accused-and permits the warrantless seizure. Of course, the

> extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them: - the 'plain-view' doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges." 91 S.Ct. at 2037-38.

In sum, the conditions necessary for the applicability of the plain view doctrine are: (1) there must be a prior justification for an intrusion into a protected area, (2) in the course of which evidence is inadvertently discovered, and (3) where it is immediately apparent without close inspection that the items are evidence or contraband.

In the instant case, Officer Schomaker, after receiving a call of a robbery or burglary, proceeded to the address involved. Upon arrival he was told that one or more persons had left that address on foot, headed south, and were being chased by several other officers. He was given no information relating to what, if anything, had been taken from the residence.

He then proceeded to patrol the area and observed a vehicle pull slowly away from a stop sign. He immediately decided to pull the vehicle over to a stop to check it, and did so, observing a great deal of activity in the vehicle just prior to the stop. After he had stopped the vehicle he immediately exited his vehicle and ordered the defendants therein to come over to his police vehicle and place their hands on the police car. He then made a quick search of the defendants herein for weapons.

After this, the officer then walked over to the defendants' vehicle and saw pieces of jewelry laying on the front seat of the car on the right hand side. Whthout any further information, he later went back to the defendants' vehicle a second time, entered it and made a thorough check of the front, finding additional jewelry, a sledge hammer, screwdrivers, a flashlight and brown gloves not earlier observed.

Under these facts, none of the three conditions necessary for the applicability of the plain view doctrine are present.

The transcript is void of a showing that Officer Schomaker had prior justification for approaching defendants' vehicle after his stop, detention and search of them. The defendants left their vehicle, walked towards the officer's car, were detained and searched. There is nothing in the record in this matter to justify the officer going to the defendants' vehicle and searching and seizing the items sought suppressed herein.

Under these facts, the additional jewelry, a sledge hammer, screwdrivers, a flashlight and brown gloves were not inadvertently discovered.

Under these facts, it was not immediately apparent to the seizing officer, without close inspection, that the items seized were evidence or contraband.

It is submitted that a warrantless seizure of materials in plain view would be an unreasonable seizure under the

Fourth Amendment of the United States Constitution absent probable cause and a legitimate reason for being present unconnected with a search directed against the accused. Even if we assume probable cause did exist in our instant case at the time of the search, there is no showing of a legitimate reason for Officer Schomaker to leave the area of his vehicle and the defendants and walk over to the defendants' vehicle, that is, no showing which would justify a bypass of the search warrant procedure.

As the United States Supreme Court stated in *Collidge v. New Hampshire,* 403 U.S. 443, 91 S. Ct. 2022, 29 L. Ed. 2d 564, (1971),

> " * * * plain view alone is never enough to justify the warrantless seizure of evidence. This is simply a corollary of the familiar principle * * * that no amount of probable cause can justify a warrantless search or seizure absent 'exigent circumstances.' " 403 U.S. at 468, 91 S. Ct. at 2039, 29 L. Ed. 2d at 584.

It is therefore submitted that the plain view doctrine is not applicable to the instant case.

II. WHETHER THE INITIAL STOP OF DEFENDANTS WAS A LAWFUL INVESTIGATORY STOP?

It is submitted that if the officer in the case of *Siberon v. New York,* 392 U.S. 40. 88 S. Ct. 1889, 20 L. Ed. 2d 917 (1968), did not have sufficient evidence to allow an investi-

gatory stop after seeing the suspect confer with various known narcotic addicts for eight hours then Officer Schomaker cannot be said to have sufficient grounds to stop the defendants because he saw their vehicle stop at a stop sign and then pull off slowly in a twenty mile per hour zone at 10:29 P.M. in an area near to where a burglary or a robbery had just been committed. It is further submitted that pursuant to *Terry v. Ohio,* 392 U.S.1, 88 S.Ct. 1868, 20 L.Ed. 889 (1968), an officer must first have the right not to avoid the person under suspicion but rather to approach him and by doing so intrude into the person's freedom of movement. The police cannot approach citizens under circumstances that make it seem that some form of detention is imminent unless they have probable cause to arrest an individual or reasonable grounds to detain the individual. It is further submitted that pursuant to *Peters v. New York,* 392 U.S. 40, 88 S. Ct. 1889 (1968), furtive actions and flight at the approach of law officers may indeed be proper factors in the decision to make an arrest *if coupled with specific knowledge on the part of the officer relating the suspect to the evidence of a crime.*

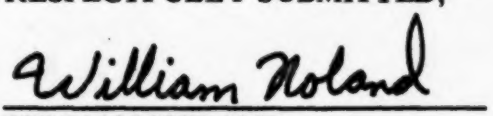
In the instant case the officer had no specific knowledge relating the defendants to any crime. Nor can the facts in this case be said to furnish probable or reasonable cause for a stop, arrest or search. The facts don't connect the defendants with criminal activity. The facts are at least as consistent with innocent activity as with guilt.

It is submitted that the initial stop of defendants was unlawful, that evidence seized as a result is inadmissible at trial pursuant to *Mapp v. Ohio*, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961) and that the Supreme Court of the State of Louisiana erroneously applied principles of federal constitutional law to the undisputed facts of this case.

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be granted.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing petition for a writ of certiorari has been served upon the State of Louisiana by placing the appropriate number of copies of same in the U.S. Mail, postage prepaid, addressed to ABBOTT J. REEVES, Assistant District Attorney for the Parish of Jefferson, State of Louisiana at Research & Appeals, 419 Derbigny Street, Gretna, Louisiana 70053 on the 11th day of March, 1980.

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APPENDIX

SUPREME COURT OF LOUISIANA

NO. 64,767

STATE OF LOUISIANA

V.

JOHN A. DUPART AND REGINALD ADAMS

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT PARISH OF JEFFERSON, STATE OF LOUISIANA HONORABLE PATRICK E. CARR, JUDGE

MARCUS, Justice*

John A. Dupart and Reginald Adams were charged in the same information with simple burglary in violation of La. R.S. 14:62. Defendants pleaded not guilty at the arraignment. After the trial judge denied defendants' motions to suppress physical evidence, the state amended the information to charge defendants with receiving stolen things valued at two hundred dollars in violation of La. R.S. 14:69. Defendants moved to withdraw their former pleas of not guilty and to enter pleas of guilty to the amended charge, expressly reserving their right to appeal the court's denial of their pre-plea motions to suppress. [1] The trial judge accepted the pleas

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1. State v. Crosby, 338 So. 2d 584 (La. 1976).

* Chief Judge Paul B. Landry, Retired, is sitting by assignment as Associate Justice Ad Hoc in place of Tate, J. upon this case.

of guilty after determinging that the pleas were made voluntarily with understanding of the nature of the charges. Dupart was sentenced to serve two years at hard labor; Adams was sentenced to serve eighteen months at hard labor. On appeal, defendants rely on two assignments of error for reversal of their convictions and sentences.

ASSIGNMENTS OF ERROR NOS. 1 AND 2

Defendants contend the trial erred in denying their motions to suppress physical evidence. They argue the police officers did not have reasonable cause to stop their automobile. Hence, the subsequent search of the vehicle was invalid and the items seized therein should have been suppressed.

At 10:29 on the night of September 26, 1978, Deputy Richard Schomaker, who had six years experience with the Jefferson Parish Sheriff's Office, was notified of a burglary in progress at 3730 Jean Street in Metairie, Louisiana. When he arrived at the scene, the deputy was advised by several officers already present that one or more suspects had fled on foot south from Jean Street and were being chased by several other officers. Deputy Schomaker proceeded south from Jean Street on Division Street. At Stefano Street, one block south of Jean Street, he observed a vehicle containing two occupants turn south from a stop sign on Stefano Street onto Division Street. The automobile was traveling at approximately ten miles per hour in a twenty mile per hour zone. Believing that the burglars might be in this slow-moving car, Deputy Schomaker decided to stop it and turned on his red light and sounded his horn. At this time, the vehicle accelerated to approximately

thirty-five miles per hour and the deputy noticed a "great deal of activity inside the car." About four blocks further down Division Street, he managed to pull the vehicle over. The two occupants (defendants herein) were ordered out of the car and to place their hands on the police vehicle; the doors of defendants' vehicle were left open. The deputy quickly searched defendants for weapons and walked over to their car and noticed through an open door several pieces of jewelry on the right side of the front street. The inside of the car was illuminated by its interior light. After other officers arrived to assist, Deputy Schomaker searched the vehicle and found more pieces of jewelry, a sledge hammer, two screw drivers, a flashlight and brown gloves.

In determining the validity of the warrantless search of the vehicle, there are three points in time which must be examined: the initial stop of the vehicle, the police officer's observation of the jewelry on the front seat, and the subsequent search of the vehicle. If the initial stop was not justified, then the subsequent acts are illegal fruits of the poisonous tree. Wong Sun v. United States, 371 U.S. 471 (1963). The right of law enforcement officers to stop and interrogate one reasonably suspected of criminal conduct is recognized by La. Code Crim. P. art. 215.1, as well as both the federal and state jurisprudence. Terry v. Ohio, 392 U.S. 1 (1968); State v. Chopin, 372 So. 2d 1222 (La. 1979); State v. Drew, 360 So. 2d 500 (La. 1978), *cert denied,* U.S. , 99 S. Ct. 820 (1979). Probable cause is not required to justify an investigatory stop; reasonable suspicion is sufficient. Adams v.

Williams, 407 U.S. 143 (1972); United States v. Hall, 557 F. 2d 1114 (5th Cir. 1977), *cert denied,* 434 U.S. 907 (1978); State v. Chopin, *supra;* State v. Drew, *supra. Terry v. Ohio* and *Adams v. Williams* approved investigatory stops of individuals based on reasonable suspicion. The standards set forth in *Terry* and *Adams* have been applied to the stopping of automobiles based on reasonable suspicion. United States v. Wright, 565 F. 2d 486 (8th Cir. 1977), *cert denied,* 435 U.S. 974 (1978); United States v. Hall, *supra;* State v. Rogers, 324 So. 2d 403 (La. 1975); State v. Weathers, 320 So. 2d 892 (La. 1975); State v. Scott, 307 So. 2d 291 (La. 1975); State v. Herron, 301 So. 2d 312 (La. 1974); State v. Jefferson, 284 So. 2d 882 (La. 1973).

In the instant case, the police officer was justified in stopping defendants' vehicle for investigatory purposes. The officer spotted the vehicle in the immediate vicinity of the crime, in an area toward which the suspects had fled, immediately after the occurrence of the crime. They were driving very slowly. Moreover, defendants' conduct after the officer turned on his red light and sounded his horn was consistent with one who had just committed a crime. Defendants' attempt to escape and their activities in the car increased the officer's suspicion that the burglars were in the car. Clearly, the officer had reasonable cause to make an investigatory stop of the vehicle and to question defendants.

Having made the investigatory stop, Deputy Schomaker, through the open door in the lighted car, saw jewelry on the front seat. Objects falling in the plain view of an officer who

has a right to be in the position to have that view are subject to seizure. [2] Harris v. United States, 390 U.S. 234 (1968); State v. Rogers, *supra;* State v. Scott, *supra;* State v. Herron, *supra;* State v. Jefferson, *supra.*

We believe that the officer's observation of the jewelry on the front seat of the car together with the previous suspicious circumstances gave Deputy Schomaker probable cause to believe that evidence of the burglary was inside the vehicle. When probable cause exists for the searching of a vehicle and circumstances render securing a warrant impractical, a warrantless search of the automobile does not violate the fourth amendment. Chambers v. Maroney, 399 U.S. 42 (1970); Carroll v. United States, 267 U.S. 132 (1925); State v. Hollingsworth, 292 So. 2d 516 (La. 1974). In the instant case, the suspects' vehicle was stopped on a public street at night in the immediate area where the crime had just previously been committed. Clearly, the circumstances rendered securing a warrant impractical. Since there were probable cause and exigent circumstances, the warrantless search of the suspects' vehicle was not unconstitutional. The trial judge did not err in denying defendants' motions to suppress the evidence. Assignments of Error Nos. 1 and 2 are without merit.

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2. Apparently, Deputy Schomaker did not actually seize the jewelry from the front seat of the car at this time. The record indicates that, after Schomaker checked the vehicle, he waited for assistance to arrive. After assistance arrived, he made a search of the vehicle and seized all the items found therein.

DECREE

For the reasons assigned, defendants' convictions and sentences are affirmed.

SUPREME COURT OF LOUISIANA

STATE OF LOUISIANA

Versus No. 64767

JOHN A. DUPART and
REGINALD ADAMS

DIXON, Justice (concurring)

I respectfully concur.

The initial attempt to stop defendants was not unreasonable. State v. Jefferson, 284 So. 2d 882 (La. 1973). The use of the phrase "reasonable suspicion" to justify police intrusion, or a "stop" is, to my mind, dangerous. This is due principally to the proclivity of persons connected with law enforcement to seize on such catchy phrases as "stop and frisk" and "reasonable suspicion." These shorthand phrases are frequently interpreted too literally to give them real meaning.

The majority also cites Terry v. Ohio, 88 S.Ct. 1868 (1968) and Adams v. Williams, 92 S.Ct. 1921 (1972), to support a proposition for which I do not think they stand. The two cases would permit police intrusion into privacy for reasons which did not constitute "probable cause" under the warrant requirements of the federal system. Nevertheless, both cases do require police intrusions into privacy which are less than custodial arrests to be governed by the constitutional

standard of reasonableness. That standard, I believe, is met in the case before us.

That reliance on "stop and frisk" statutes is dangerous and confusing was specifically treated in Terry v. Ohio, where the court said:

> " . . . There is some suggestion in the use of such terms as 'stop' and 'frisk' that such police conduct is outside the purview of the Fourth Amendment because neither action rises to the level of a 'search' or 'seizure' within the meaning of the Constitution. We emphatically reject this notion. It is quite plain that the Fourth Amendment governs 'seizures' of the person which do not eventuate in a trip to the station house and prosecution for crime - - 'arrest' in traditional terminology. It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person. And it is nothing less than sheer torture of the English language to suggest that a careful exploration of the outer surfaces of a person's clothing all over his or her body in an attempt to find weapons is not a 'search.' Moreover, it is simply fantastic to urge that such a procedure preformed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a 'petty indignity.' It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.
>
> . . .
>
> In the case there can be no question, then, that Officer McFadden 'seized' petitioner and subjected

him to a 'search' when he took hold of him and patted down the outer surfaces of his clothing. We must decide whether at that point it was reasonable for Officer McFadden to have interfered with petitioner's personal security as he did. And in determining whether the seizure and search were 'unreasonable' our inquiry is a dual one -- whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.

If this case involved police conduct subject to the Warrant Clause of the Fourth Amendment, we would have to ascertain whether 'probable cause' existed to justify the search and seizure which took place. However, that is not the case. We do not retreat from our holding that the police must, whenever praticable, obtain advance judicial approval of searches and seizures through the warrant procedure, . . . or that in most instances failure to comply with the warrant requirement can only be excused by exigent circumstances, . . . But we deal here with an entire rubric of police conduct -- necessarily swift action predicated upon the on-the-spot observations of the officer on the beat -- which historically has not been, and as a practical matter could not be, subjected to the warrant procedure. Instead, the conduct involved in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures.

Nonetheless, the notions which underlie both the warrant procedure and the requirement of probable cause remain fully relevant in this context." . . . *(Underscoring added).*

. . .

> . . . We merely hold today that where a police officer observes unusual conduct which leads him reasonable to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquires, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.
>
> Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken."
> 88 S.Ct. 1868 at 1877, 1879, 1884 - 1885.

In the case before us, when the defendants Dupart and Adams discovered the presence of police, they began to do something in the automobile which could have been attempts to hide things from the police, and then fled the scene rapidly. The proximity of the defendants both in time and place to the scene of the burglary, added to their flight and furtive actions, and added to the fact that a burglary had occurred, to the knowledge of the policeman, was enough to create probable cause to stop them.

SUPREME COURT OF LOUISIANA

STATE OF LOUISIANA

VERSUS NO. 64,767

JOHN A. DUPART and
REGINALD ADAMS

CALOGERO, Justice, concurring

The trial judge did not err in refusing to grant the motion to suppress. The significant inquiry here is whether the officer made a lawful stop of defendant's vehicle. In my view he did. The articulable facts known by the officer and set forth fully in the majority opinion were sufficient to justify the intrusion attendant upon stopping the vehicle.

SUPREME COURT OF LOUISIANA

NO. 64,767

STATE OF LOUISIANA

VS

JOHN A. DUPART AND REGINALD ADAMS

APPEAL FROM THE TWENTY-FOURTH JUDICIAL
DISTRICT COURT,
PARISH OF JEFFERSON,
HONORABLE PATRICK E. CARR, JUDGE

On Application for Rehearing

Denied.

FWS

JAD

PFC

WFM

FAB

JCW

Dennis, J., would grant the rehearing.

Supreme Court, U. S.
FILED
JUL 21 1980
MICHAEL RODAK, JR., CLERK

NO. 79-1410

In the Supreme Court of the United States

OCTOBER TERM, 1979

JOHN A. DUPART &
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Petitioners

versus

STATE OF LOUISIANA,

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ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF LOUISIANA

SUPPLEMENTAL JURISDICTIONAL STATEMENT

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TABLE OF CONTENTS

OPINIONS OF THE COURT BELOW 2
JURISDICTION OF THE SUPREME COURT 2
CERTIFICATE OF SERVICE 3
APPENDIX A A-1

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO: 79-1410

JOHN A. DUPART &
REGINALD ADAMS,

Petitioners

versus

STATE OF LOUISIANA,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO SUPREME COURT OF THE STATE OF LOUISIANA

JOHN A. DUPART and REGINALD ADAMS, petitioners herein pray that a writ of certiorari issue to review the judgment entered in this criminal case on November 12, 1979 and made final on December 13, 1979 by the Supreme Court of the State of Louisiana, dissenting opinion, May 23, 1980.

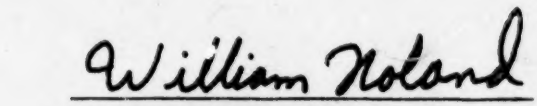
OPINIONS OF THE COURT BELOW

The opinion of the Supreme Court of the State of Louisiana, excluding the May 23, 1980 dissenting opinion, appears in the Appendix of the original writ application. The May 23, 1980 dissenting opinion appears in the appendix hereto.

JURISDICTION OF THE SUPREME COURT

The judgment of the Supreme Court of the State of Louisiana was entered on November 12, 1979. Petitioners' timely application for a rehearing was denied on December 13, 1979. The dissenting opinion of Justice Dennis was entered on May 23, 1980. Title 28, United States Code, Section 1257 (3) confers jurisdiction on this Court to review the judgment in question by a writ of ceritorari.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing supplemental jurisdictional statement has been served upon the State of Louisiana by placing the appropriate number of copies of same in the U. S. Mail, postage prepaid, addressed to ABBOTT J. REEVES, Assistant District Attorney for the Parish of Jefferson, State of Louisiana, at Research & Appeals, 419 Derbigny Street, Gretna, Louisiana 70053 on the 18th day of July, 1980.

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APPENDIX A

MAY 23, 1980

SUPREME COURT OF LOUISIANA
NO. 64,767

STATE OF LOUISIANA
VERSUS
JOHN A. DUPART AND REGINALD ADAMS

DENNIS, Justice, dissenting.

I respectfully dissent. The police officer did not have reasonable grounds to make the initial stop of the vehicle from which the evidence was seized. The motion to suppress, therefore, should have been granted.

In State v. Saia, 302 So.2d 869 (La. 1974), this Court held that the police did not have "probable cause to arrest the individual or reasonable grounds to detain the individual" at p. 873, when the defendant Saia was seen leaving a residence which was a known drug outlet and turned to walk away when the police pulled up beside her in their police car. The facts in this case mandate the same result. The officer's only articulable reasons for stopping the car were that it was going at a slow rate of speed and it was relatively near the place where

the burglary occurred. This was not sufficient to warrant the initial stop of the vehicle.

The majority opinion states: "Moreover, defendants' conduct after the officer turned on his red light and sounded his horn was consistent with one who had just committed a crime. Defendants' attempt to escape and their activities in the car increased the officer's suspicion that the burglars were in the car. Clearly, the officer had reasonable cause to make an investigatory stop of the vehicle and to question the defendants." Slip opinion at p. 3. In *Saia*, it was noted that once the officers caught the defendant and then saw the glassine envelope that they had probable cause to arrest. The evidence was held inadmissible, however, because of their initial actions in approaching Saia "under circumstances that [made] it seem that some form of detention [was] imminent" at p. 873, was not held to be a reasonable stop. In the instant case it may be true that once the car was stopped and the officer saw the jewelry in the car, he had probable cause to arrest. As in *Saia*, however, the officer did not have reasonable grounds to make the initial stop. The initial stop being illegal, the evidence seized as a result should not have been admitted at trial.

* * * *

Supreme Court, U. S.
FILED
MAY 28 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1410

JOHN A. DUPART and REGINALD ADAMS,
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BRIEF FOR THE STATE OF LOUISIANA IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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OPINION BELOW

The opinion of the Supreme Court of Louisiana is not yet reported, although it was decided on November 12, 1979, Docket Number 64,767. *See* Appendix of Relator's Brief, A-1 et seq.

STATEMENT

Assistant District Attorney William W. Hall, Esq., Jefferson Parish, State of Louisiana, prosecuted the defendants, John A. Dupart and Reginald Adams for the crime of simple burglary (LA R.S. 14:62). Dupart was represented by James Weidner, Esq., and Adams was represented by William Noland, Esq. The Honorable Patrick Carr was Judge presiding. After a Motion to Suppress was denied (Tr. Hearing on Motion to Suppress, p. 28), the defendants withdrew a former plea of not guilty and entered a plea of guilty to receiving stolen things following extensive *Boykinization* on November 29, 1978. (R. p. 34).

On January 24, 1979 defendant John A. Dupart, age 32, was sentenced to imprisonment at hard labor for two years and Reginald Adams, age 27, was sentenced to serve 18 months.

Convictions and sentences were affirmed by the Louisiana Supreme Court on November 12, 1979 (Docket No. 64,767).

STATEMENT OF THE FACTS

On October 12, 1978 defendants John A. Dupart and Reginald Adams were charged by a bill of information in the Twenty-Fourth Judicial District of simple burglary of a building and structure belonging to Ann DeViney, in violation of R.S. 14:62 on September 26, 1978.

On the evening of September 26, 1978 Deputy Schomaker of the Jefferson Parish Sheriff's Office received a call around 11:00 p.m. that *a robbery was in progress* at 3730 Jean Street. (Tr. on Hearing on Motion to Suppress, p. 4). When Deputy Schomaker arrived at that address, several narcotics officers informed him that one person had left the house. Deputy Schomaker proceeded to check the vicinity, and spotted a dark Oldsmobile travelling at an extremely slow rate of speed nearby, suspecting a DWI, if not the suspect burglars. (Tr. Hearing on Motion to Suppress, p. 5). When Deputy Schomaker attempted to stop the vehicle, it sped up and there was a great deal of activity in the car. (Tr. Hearing on Motion to Suppress, p. 7). The vehicle pulled over four blocks later. (Tr. Hearing on Motion to Suppress, p. 7). The defendants, John A. Dupart and Reginald Adams, were ordered to get out of the car and to place their hands on the police car. (Tr. Hearing on Motion to Suppress, p. 8). The defendants were advised that they were being detained for failure to pull over when motioned to do so. (Tr. Hearing on Motion to Suppress, p. 8). As Deputy Schomaker spoke to the defendants in their car, he spotted pieces of jewelry lying on the front seat of the car. (Tr. Hearing on Motion to Suppress, p. 9). When assistance arrived, Deputy Schomaker returned to the defendants' car and found several more pieces of jewelry lying in the front of the car, a large sledge hammer, two screwdrivers, a flashlight and brown gloves. (Tr. Hearing on Motion to Suppress, p. 10). The jewelry was later identified by the victim of the burglary as items stolen. (Tr. Hearing on Motion to Suppress, p. 17).

On November 29, 1978, hearing was held before Honorable Patrick Carr, Judge presiding, on a Motion to Suppress the evidence. The defendants' Motion to Suppress was denied. (Tr. Hearing on Motion to Suppress, p. 28). Defendants then pleaded guilty to receiving stolen things and reserved the right to appeal the trial court's ruling on the Motion to Suppress. Dupart was sentenced to serve 2 years at hard labor; Adams got 18 months imprisonment.

QUESTIONS PRESENTED

1. Whether there was reasonable cause to stop the defendants' automobile.

2. Whether the subsequent seizure of items in the automobile was valid under the doctrine of plain view.

LAW AND ARGUMENT

I.

The Police Officers Had The Right To Stop and Interrogate Someone Reasonably Suspected Of Criminal Conduct.

The right of law enforcement officers to stop and question someone reasonably suspected of criminal conduct is provided for by La. C.Cr.P. Art. 215.1 and is recognized under both Louisiana and Federal jurisprudence. *Terry vs. Ohio*, 392 U.S. 1 (1968); *State vs. Ryan*,

358 So.2d 1274 (1978); *State vs. Drew*, 360 So.2d 500 (1978), cert. den. ____ U.S. ____, 99 S.Ct. 820 (1979); *U.S. vs. Preston*, 608 F.2d 626 (CA 5, 1979).

In the instant case, from this fact situation, we may deduce the following: The officer was clearly, legitimately at the location and with sufficient probable cause to pursue his investigatory stop of the suspect. Testimony at the hearing on the Motion to Suppress revealed that the officer suspected a DWI due to the rate of speed at which the defendants were travelling. (Tr. p. 5).

In addition, the "nearness to the scene of the crime" was a relevant factor to justify the stop. *U.S. vs. Purry*, 545 F.2d 217 (D.C. Cir. 1976); *U.S. vs. Wright*, 565 F.2d 486 (CA 8, 1977), cert. denied 435 U.S. 974 (1978).

Also, the suspects were picked up in a high crime area, call it a "suspect location," *U.S. vs. Magda*, 547 F.2d 756 (CA 2, 1976), cert. denied, 434 U.S. 878 (1977), further supporting police had reasonable suspicion of criminal activity.

The record supports the police stop here by virtue of having observed the vehicle travelling at an extremely slow rate of speed, and failure to pull over when motioned to do so. (Tr. pp. 5, 8). *State vs. Rudolph*, 369 So.2d 1320 at 1325 (1979). See also, *Schneckloth vs. Bustamonte*, 412 U.S. 219, 93 S.Ct. 2041 (1973) and *Cady vs. Dombroski*, 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706

(1973) which speaks further of "housekeeping duties of the highway," *State vs. Drew*, 360 So.2d 500 (1978) cert. denied 430 U.S. 1059, 99 S.Ct. 820 (1979). Alternatively, "furtive gestures" supported, as here, with additional facts can be given "guilty connotations". *People vs. McGaughran*, 585 F.2d 206 (1978).

Inasmuch as the facts reveal that the police officers had reason to suspect criminal conduct, the State submits that there was sufficient cause to stop and question the defendants in this case. The subsequent seizure of jewelry in the automobile was the result of observing it in plain view.

There is no merit to petitioner's Assignment of Error presented in this Question.

II.

The Jewelry Was Lawfully Seized Under The Doctrine Of Plain View.

The quintessence of each Assignment of Error goes directly to whether or not the police were legally where they were when they viewed the jewelry lying on the front seat of the car.

The sole issue is were the police legally in a place which would afford them an opportunity to exercise the exception to the Fourth Amendment known as "Plain View." The State submits there is no question.

They were on the scene, responding to a "robbery in progress." *State vs. Jefferson*, 284 So.2d 882, cert. den. ____ U.S. ____ (1974).

The doctrine that a law enforcement officer, who has a right to be where he is, may seize objects in plain view is well established in the jurisprudence.

The stolen jewelry was in plain view on the front seat of the car at the time of the arrest. Thus, under the plain view doctrine, the seizure was constitutional. *State vs. Braud*, 357 So.2d 545 (1978). It is well established that contraband in the plain view of a police officer who is legally at the location where he obtains the view is subject to seizure without a warrant. *Harris vs. United States*, 390 U.S. 234, 88 S.Ct. 992, 19 L.Ed.2d 1067 (1968); *Alderman vs. United States*, 394 U.S. 165, 89 S.Ct. 961, 22 L.Ed.2d 176 (1969). In the instant case there is no dispute the evidence was inadvertently observed, and that it was clearly pieces of jewelry.

The law is clear also, that as the officers inadvertently saw the stolen jewelry (compare *State vs. Carter*, 363 So.2d 893 (1978)) from a vantage point that did not intrude upon a protected area or, as herein, where that protected area was entered with prior justification, there is no violation of the search warrant rule because there is no "search." *State vs. Parker*, 355 So.2d 900 at 904 (1978) (being a particularly well-written and most comprehensive statement of the "plain view" doctrine by Dixon, J.) Compare *Pennsylvania v. Mimms*, 434

U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977). The State submits this issue is well-settled and the allegation of error is meritless.

CONCLUSION

CONSIDERING THE FOREGOING REASONS, the State of Louisiana submits the petitioners' Application for Writ is without merit and should be dismissed.

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PROOF OF SERVICE

I hereby certify that three copies of the foregoing have been sent to William Noland, Esq., Attorney for Petitioners, 2739 Tulane Avenue, New Orleans, Louisiana 70186, by placing in the United States mail, postage prepaid this ____ day of May, 1980.

ABBOTT J. REEVES